

Assembly Bill 2038 (Lieber)
Crime Victims with Disabilities Act
as amended in Senate Appropriations Committee

Background

Crime against victims with disabilities has been called an "invisible epidemic," comparable with domestic violence before society awakened to the horror and widespread extent of that terrible problem. Children and elders with disabilities, homeless people with disabilities, and people with disabilities in care, treatment, and incarceration facilities are among those most vulnerable and most often victimized. Women and men with disabilities also are at high risk of sexual assault and domestic violence.

Despite great efforts, California -- like the rest of the country -- continues to fall shamefully short of meeting its responsibility to provide equal protection from crime to people with disabilities. Research shows that the current system generally fails to prevent crimes, assist victims, prosecute perpetrators, or even report most crimes against victims with disabilities.

It is unlikely that society would tolerate this level of violent crime against most other classes of victims without demanding much more effective action.

Many of these crimes occur in residential facilities, where predators sometimes use the shelter of their employment to victimize persons with severe disabilities, often including elders. Criminals frequently get away with this abuse in some long-term care (LTC) facilities in particular. The law gives mandated reporters a choice of reporting abuse in LTC facilities to either the police or the local LTC ombudsperson program. Some responsible LTC facility operators encourage mandated reporters to call both the ombudspersons and the police. Others, however, train the employees to call only the ombudspersons -- knowing that ombudspersons have no law-enforcement authority, and federal law in most cases prevents them from notifying the police. Ombudspersons are frustrated to receive reports of serious crimes and be unable to do anything about them.

Some LTC operators, too, are negligent in carrying out their legal duty to report abuse to the state Department of Public Health. Since 2001, the department has cited LTC facilities 285 times for failure to report, but the fine is no more than \$1,000 and as little as \$60, even if the failure to report results in the resident's death. Knowing that the lack of mandated reporter calls to law enforcement agencies also makes it unlikely that the department will ever know that a LTC facility failed to report abuse, some irresponsible facility operators gamble that they will not be caught and, if they are, simply absorb these minor fines as a cost of doing business.

Summary

The Crime Victims with Disabilities Act takes a comprehensive approach, requiring reporting of abuse to law enforcement agencies as well as ombudsperson programs, making it clear that abuse is a crime, clarifying law enforcement jurisdiction, and providing for better training of police, prosecutors, rape-crisis counselors, and health-care providers.

Because of the state budget shortfall, it is impossible to incur any substantial costs this year. But even with that major restriction, there is much that can be done.

Specifics

Crimes Against Long-Term Care Facility Residents

- Requires mandated reporters to report abuse in long-term care facilities to both the local law enforcement agencies and local long-term care ombudsperson programs, instead of one or the other.
- Phases in mandated-reporter training on the new dual-reporting requirement as agencies are able to provide the training without additional costs. During the transition, mandated reporters who report only to the police or only to the ombudsperson, in a good-faith belief that only one such report is required, will be considered in substantial compliance and not subject to penalties. Ombudspersons who receive these calls will tell the mandated reporters that they also must report to law enforcement agencies.
- Makes abuse of long-term care facility residents that occurs outside of the facilities the responsibility of law enforcement and Adult Protective Services, not the ombudsperson programs.

Law Enforcement and Other Agencies' Responsibilities

- Makes it clear that abuse of elders and "dependent adults" (adults with disabilities and adult residents or inpatients of care facilities) is a crime. Law enforcement agencies, Adult Protective Services, and local long-term care ombudsperson programs are encouraged to develop memoranda of understanding to assure cooperation, but law enforcement agencies retain ultimate responsibility for criminal investigations.
- Requires state law enforcement agencies, and strongly encourages local law enforcement agencies, to train their officers using the telecourse "Crime Victims with Disabilities." Encourages local law enforcement agencies to involve people with disabilities and their service and advocacy organizations

in the training. The telecourse was produced by the Department of Justice and Commission on Peace Office Standard and Training.

- Requires the Department of Justice to send a bulletin to police chiefs, sheriffs, and district attorneys alerting them to the invisible epidemic of crime against people with disabilities and the importance and urgency that the law now places on addressing the problem, informing them of the requirements and recommendations that the law gives them, and strongly encouraging them to train their officers on relevant laws, which it lists.
- Expands the mission of the county Elder Death Review Teams to include suspicious deaths of adults with disabilities and residents and inpatients of care facilities.
- Requires the state Department of Developmental Services to report crimes against its developmental center clients to local law enforcement agencies.

Sexual Assault and Domestic Violence Victims with Disabilities

- Expands the state protocol for examination and treatment of sexual assault victims to include victims with disabilities.
- Increases training for health care professionals who examine and treat sexual assault victims to include training on victims with disabilities.
- Augments state training for district attorneys concerning sexual assault to cover the special problems of investigating and prosecuting crimes against victims with disabilities.
- Adds at least one expert on crimes against people with disabilities to the state sexual assault advisory committee.
- Creates a new data category for domestic violence death reporting: people with disabilities who died in homicides related to domestic violence.

Victim and Witness Assistance

- Requires victim-witness assistance programs to explicitly cover victims and witnesses with disabilities.

Leadership for Further Action

- Designates the Office of Emergency Services as the lead agency to coordinate state agencies assisting elders and dependent adults who become crime victims.

- Requires the Office of Emergency Services to convene a broad working group to develop model memoranda of understanding and recommend further reform of the system for protecting people with disabilities.

Cost

The Departments of Aging, Developmental Services, Health Care Services, Justice, Public Health, and Social Services and the Office of Emergency Services report no substantial costs. There are no new programs.

Status and History

Senate Appropriations Committee suspense file
Amended 8/4/08

Passed Senate Human Services Committee 4-0

Passed Senate Public Safety Committee 3-0

Passed the Assembly 49-27

Passed Assembly Appropriations Committee 12-5

Passed Assembly Human Services Committee 6-1

Passed Assembly Public Safety Committee 5-1

Support

The Arc of California (sponsor)

Advocates for Children's Health Affected by Mercury Poisoning

Alliance of California Autism Organizations

Area 1 Developmental Disabilities Board

Autism Awareness Association, UC Davis

Autism Education Network

Autism Society of America (Coachella Valley, Greater Long Beach/San Gabriel Valley, Inland Empire, Los Angeles, San Diego County, Santa Barbara, San Francisco Bay Area, and Ventura County Chapters)

Autism Society of California

Autism Speaks (Bay Area, LA, Orange County, San Diego, and Sacramento Chapters)

Burlingame Mothers for Special Kids

California Association of Public Authorities for In-Home Supportive Services

California Autism Foundation

California Church IMPACT

California Coalition Against Sexual Assault

California Foundation for Independent Living Centers

California Long Term Care Ombudsman Association

California Narcotics Officers Association

California Peace Officers Association

California Police Chiefs Association

California Senior Legislature

Commission on the Status of Women

Community Resources for Independence

Congress of California Seniors
Crime Victims United of California
Disability, Abuse and Personal Rights Project of Spectrum Institute
Families for Effective Autism Treatment (Fresno/Madera Counties, LA, and Solano)
Friends of Children with Special Needs
Friends of the Bay School
Independent Living Center of Kern County
Kaiser Spectrum Kids
K.E.N. Project, Calabasas
National Autism Association
Older Women's League of California
Ombudsman Services of San Mateo County
Parents Helping Parents
Protection and Advocacy, Inc.
REACH Project
Sacramento Asperger Syndrome Info and Support
Sacramento BioMed
San Joaquin County Commission on Aging
State Council on Developmental Disabilities
Schafer Autism Report
Talk About Curing Autism
Unlocking Autism
Westside Center for Independent Living

Opposition

Aging Services of California
California Association for Adult Day Services
California Association of Health Facilities
California Hospital Association
Department of Finance

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